Reply Comments of Constellation Energy Commodities Group, Inc.
Concerning Recent Procurement Events Held On Behalf of
Commonwealth Edison Company and the
Ameren Illinois Utilities (AmerenCILCO, AmerenCIPS, and AmerenIP)

Constellation Energy Commodities Group, Inc. ("Constellation") appreciates the opportunity to provide reply comments concerning recent procurement events held on behalf of Commonwealth Edison Company and the Ameren Illinois Utilities (AmerenCILCO, AmerenCIPS, and AmerenIP). As noted in the Initial Comments of the procurement monitor Boston Pacific Company ("Boston Pacific"), and the Illinois Attorney General's Office ("AG"), the recent procurement events were successful, competitively procuring all of the required quantities (Boston Pacific Comments, pp. 1, 3), which results in stable prices for Illinois bundled customers (AG Comments, p. 1). As the AG noted, the Requests For Proposal ("RFPs") have become more robust, with an expanding pool of participation and a greater number of winning bidders over previous years. (AG Comments, p. 5) Constellation's Initial Comments and these Reply Comments are intended to provide further refinements to improve a process that has already seen the benefits from changes suggested through last year's review, and respond to suggestions for changes from this year's procurement cycle.

Boston Pacific Recommendations

Recommendation 1: Ameren and ComEd should report the full cost of providing service.

Constellation concurs that the RFP results in and of themselves do not provide the full picture of procurement costs for eligible retail customers in Illinois, given the fact that the utilities are required to purchase other market products such as dispatchable energy and ancillary services (Boston Pacific Comments, p. 2), as well as being required to either purchase or sell energy and capacity into the regional markets, depending on how the forecast corresponds with actual customer load. In order to provide customers with transparency regarding the true cost of service, Constellation concurs that utilities should be required to make a public filing with the Illinois Commerce Commission ("ICC") the identifies the costs of full requirements for energy. Moreover, as noted by Boston Pacific, such disclosure would allow a fair comparison of the benefits of a full requirements product versus other methods, such as block procurement. (Boston Pacific Comments, p. 2) Boston Pacific made a similar recommendation during last year's procurement review (with which Constellation agreed), but the recommendation was not adopted and the utilities consequently failed to provide such an analysis. Constellation therefore recommends that the Commission heed the Procurement Monitor's continued suggestion on this point, and require the utilities to make a public filing detailing the full cost of utility electric service.

In keeping with the objective of providing transparency in prices, Constellation suggests that the utilities also provide in a public filing the rate translation mechanism by which the competitive procurement results will translate into rates. Disclosure of the rate translation mechanism will enable eligible retail customers to more effectively analyze their retail choice options on a prospective basis. The proposal is consistent with the Illinois General Assembly's objectives of preserving and promoting retail competition, as well as wholesale competition, in the energy industry. (220 ILCS 5/16-101A, 220 ILCS 5/20-102) That is particularly true for residential and small commercial customers, which the General Assembly recognized have not yet received the benefits of a vibrant competitive retail electric market. 220 ILCS 5/20-102(c). In order to encourage retail competition among the residential and small commercial customer classes, Section 16-118(c) of Public Utilities Act ("PUA" or "Act") (220 ILCS 5/16-118(c)) requires that the utilities provide a new tariffed service whereby a RES may, at its option, sell to the utility receivables for power and energy service for certain of its customers at a discount rate, which is based on both the costs the utility incurs in setting up and administering the program and historic bad debt ("POR/UCB"). However, that alone is not enough. As recognized by the General Assembly, "[a]ll consumers must … receive sufficient information to make informed choices among suppliers and services…" 220 ILCS 5/16-101A(e).

Although Constellation has long advocated that Illinois should avail itself of the benefits of a full requirements product, the use of full requirements has never been more important to Illinois customers than it will be in future procurements. As the benefits of retail competition move to the smaller customer classes including residential and small commercial customers, greater risk in future procurements will be placed on utility bundled customers. In assessing the appropriate amounts to procure in a given procurement cycle, the Illinois Power Agency ("IPA") must necessarily rely on utilities' load forecasts for their respective projected loads. The utilities' forecasts are merely estimates, however. It is virtually guaranteed that the utilities' forecast will be different than actual consumption, as has been true since the advent of the IPA. This will result in the utilities procuring more energy than is needed during certain months, during which it will be forced to sell the excess supply. Conversely, the utilities' supply needs may at times exceed its forecast and force it to procure additional energy.

The retail customers that take service from the utilities will necessarily bear all migration-related risks associated with the utilities' supply of electric power and energy under the current procurement methodology. Up until this point, the difference between the utilities' forecasted and actual load and resulting rates may not have been significant enough to raise red flags. However, with the roll out of POR/UCB programs at the utilities, that may well change, potentially dramatically. A failure of the utilities to accurately predict the migration of residential and small commercial customers – with which they have little, if any, experience - places the risk squarely on the shoulders of utility customers. In contrast, a full requirements product removes that risk from customers, instead placing it on suppliers, who may themselves have experience in jurisdictions where retail competition in the residential and small commercial segments is more mature. However, regardless of the supplier's experience with migration of residential and small commercial customers, the simple fact remains that under a full requirements product, the supplier – and not the utility retail customer – bears that risk.

Recommendation 2: Starting the RFPs earlier in the year can: a) enhance bidders' experience by providing enough time to meet deadlines for credit and other RFP requirements – this is particularly true for new participants, and b) provide necessary time for the procurement administrators, Staff, IPA and procurement monitors to fully vet and incorporate design enhancements to the RFPs.

Constellation agrees that there should be a sufficient amount of time allotted to pursue the necessary steps required in the RFP process well in advance of the time that the procurement event is to be held. The earlier that the procurement process begins, including addressing a Master Agreement, credit requirements and forms, detailed timeline, bidder information process, communications protocols, and other matters, the better. In addition, in order to ensure the greatest possible level of participation, the Plan should ensure that the dates for any future procurement event(s) do not conflict with the dates for other default service procurements conducted by other utilities in PJM and MISO. Further, the timing associated with any future procurement should ensure that it coincides well with the appropriate ISO's requirements to include this procurement in their modeling, capacity procurement, etc. Constellation suggests that future procurements occur no earlier than two (2) or three (3) months prior to the beginning of power flow and no later than twelve (12) months before power begins to flow.

Recommendation 3: The ICC should clarify whether next year a single, combined REC RFP should be conducted for both utilities.

Constellation agrees that clarity should be provided whether the REC RFPs should be conducted separately or consolidated into a single RFP. As Boston Pacific notes, holding a single combined REC RFP reduces the administrative burden on bidders by creating a more streamlined process with a single registration, a single pre-bid letter of credit, and harmonization on standard contracts. Additionally, a single REC RFP may simplify the calculation of the Alternative Compliance Payment that is applicable to Alternative Retail Electric Suppliers, and satisfaction with that obligation.

Recommendation 4: Consider allowing annual products for Ameren Energy RFP.

Constellation concurs that further expanding the products that may be bid and awarded to include an annual product may be favorably viewed by suppliers. Constellation previously supported an expansion of the energy products available to be bid in the Ameren energy procurement, from single-month products to strips, as was permitted in ComEd's energy RFP. As was evident from comments of the Procurement Monitor, that option was well-received. (Boston Pacific Comments, p. 6) It follows a natural progression that the products should be further expanded to permit an annual product in the Ameren energy RFP, as is permitted under the ComEd energy RFP.

Recommendation 5: For Ameren's Capacity RFP, the Act requires potential Demand Response suppliers to serve "eligible retail customers" which limits the pool of potential bidders to this RFP; within the context of what is allowed by the Act, participation in this RFP should be made less restrictive with the goal of increasing competition.

Constellation concurs that the demand response procurement should be made less restrictive. The IPA should pursue a demand response strategy that attracts the largest number of demand response products to the extent permitted by law. Such a strategy should be expanded to include demand response from all retail customers in the ComEd and Ameren service territories, which ensures that the greatest number of megawatts will be offered at the best possible price. Moreover, including demand response from the greatest number of resources "will reduce long-term direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure." (220 ILCS 5/16-101A)

To further facilitate the demand response procurement, Constellation suggests that the IPA host bidder information workshops and planning sessions dedicated to demand response products. The competitive procurements in Illinois over the last several years have been aided by workshops and by educational/collaborative sessions in advance of the procurements. Potential bidders have gained valuable knowledge regarding the bidding process and documents, and the procurement managers have learned of areas of confusion or potential issues sufficiently in advance of the procurement events to alleviate or mitigate those concerns. This forum is even more important when launching a relatively new type of competitive procurement, such as is the case here.

Recommendation 6: The IPA should address in its procurement plan for next year the implication, if any, of proposed Congressional financial regulatory legislation on derivatives.

Constellation agrees that, to the extent the IPA is aware of implications regarding proposed legislation on derivatives, such information would be helpful to include in the Plan. For example, the IPA's analysis and conclusion that the contracts entered into resulting from the RFPs call for physical settlements and therefore are not derivatives or swaps, may provide some certainty for prospective bidders.

Staff Recommendations

Recommendation 1: The Collateral Thresholds should remain at current levels unless there is consensus among the utilities, Procurement Administrators, Procurement Monitor and Staff that a compelling reason warrants new Collateral Thresholds and provided implementing new Collateral Thresholds would not require retroactive changes to existing contracts.

Constellation agrees that the current collateral thresholds are appropriate, with one exception: currently, the utilities only extend unsecured credit to BBB-/Baa3-rated bidders. Constellation suggests that unsecured credit shall be extended to bidders with BB-/Ba3 equivalent ratings. Those thresholds have been used in other major utility load auctions[1], and may increase the competitiveness of future procurements, both with respect to the number of bidders and winning price. With that single exception, Constellation agrees that collateral thresholds should not be altered without a compelling reason, and under limited circumstances. In no event should a change in collateral thresholds affect existing contracts, as that type of uncertainty is sure to keep bidders away in subsequent procurements. Constellation suggests, however, that the consensus between and among the utilities, Procurement Administrators, Procurement Monitor and

[1] *See, generally,* "*Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs"*, Pennsylvania Public Utilities Commission Docket Nos. P-2009-2093053 and P-2009-2093054, respectively; "*Petition of West Penn Power Company d/b/a Allegheny Power for Approval of Its Retail Electric Default Service Program and Competitive Procurement Plan for Service at the Conclusion of the Restructuring Transition Period*", Pennsylvania Public Utilities Commission Docket No. P-00072342; "*In the Matter of the Provision of Standard Service Offer Supply to Retail Customers In The Service Territory Of Delmarva Power & Light Company After May 1, 2006"*, Public Service Commission Of the State Of Delaware Docket No. 04-391; "*In The Matter Of the Commission's Investigation Into Default Service For Type II Standard Offer Service Customers"* and *"In The Matter Of the Competitive Selection Of Electricity Supplier/Standard Offer Or Default Service For Investor-Owned Utility Small Commercial Customers; and For The Potomac Edison Company d/b/a Allegheny Power's, Delmarva Power and Light Company's and Potomac Electric Power Company's Residential Customers"*, Public Service Commission Of Maryland Case Nos. 9056 and 9064, respectively.

Staff not be made in a vacuum, but, rather, should be made with appropriate input. Specifically, any consideration of altering collateral thresholds should include the potential impact that such a change may have on participation in the procurement events, which may be best gleaned from input by prospective suppliers. Making such a decision without that input may jeopardize the competitiveness of the future procurements.

Recommendation 2:. Amend ComEd's REC contract to (1) reduce the collateral requirement to 10% of remaining contract value; and (2) grant unsecured credit limits to creditworthy REC suppliers.

Constellation supports Staff's recommendations with regard to ComEd's REC contract. There are a number of competitive procurements for REC supply, and suppliers must evaluate in what competitive procurements to participate with their limited, and sometimes capital-constrained, resources. Granting unsecured credit limits to creditworthy REC suppliers will increase the number of potential credit-worthy bidders, which will lead to a more robust procurement and thereby result in the best available prices. Reducing the collateral requirements will likely also result in a greater number of bidders, who may have been otherwise constrained by the collateral requirements.

Attorney General Observations

The Attorney General did not make any specific recommendations for future procurements but, rather, offered observations on the most recent procurements.

Comparing Winning Bids To Wholesale Prices:

Although Constellation agrees with the conclusion reached by the AG that the historical Ameren and ComEd procurements have been competitive, the AG's contention that the NYMEX is the appropriate comparison for comparing winning bids to wholesale prices (AG Comments, pp. 1-3) is not necessarily the case. Moreover, it is not clear to what particular product or time period the AG made its comparison, and how it made its comparison. Those details can be significant, as comparing the result of the procurements to indices can yield incorrect conclusions as to the competitiveness of future auctions. For example, prices differ based on the particular hub within the competitive marketplace. Consequently, assessing a particular NYMEX data point against both ComEd and Ameren may be faulty. Even using different data points for ComEd and Ameren may lead to faulty conclusions. While NiHub or CinHub contracts may have historically tracked ComEd and Ameren respectively, there is no guaranty that this will hold true going forward. There could be several reasons for this including transmission upgrades, generation retirements, changes to RTO (such as First Energy and Duke leaving MISO to join PJM), and a lack of liquidity.

Hedging For Summer Peak:

The Attorney General also appropriately notes that customers should be protected from volatility during sustained, high summer demand. (AG Comments, p.8) The AG's proposal to do so through the use of a 10% hedge, however, puts customers at risk of either paying too much for power they do not need or simply just not buying enough power. The best and only way to truly insulate customers from the risk of having to procure additional energy during the more volatile period of demand and price of the summer months is with a full requirements product, the benefits of which are discussed in Constellation's Initial Comments, as well as in response to Boston Pacific's Recommendation 1, above.

Conclusion

Constellation recommends that future procurement plans and procurement events conducted by the Illinois Power Agency and evaluated by the Commission reflect the improvements to the procurement process described above, and in Constellation's Initial Comments. Constellation is confident that its recommendations will promote continued development of Illinois' competitive retail markets, for the ultimate benefit of Illinois consumers.

Respectfully Submitted,

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Dated: July 9, 2010